



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

HOUSTON HOSPITAL FOR SPECIALIZED SURGERY

Respondent Name

NEW HAMPSHIRE INSURANCE COMPANY

MFDR Tracking Number

M4-17-2764-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

May 18, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "the Hospital believes payment should be allowed due to the EMERGENCY case status Pursuant TAC Title 28 . . . Rule 10.2. Authorization/network approval was not necessary."

Amount in Dispute: \$11,289.68

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "This claim is covered under Liberty HCN and is being addressed as an HCN complaint. The bill for services of January 12, 2017 is currently being reviewed by the Clinical Review team. We will advise both DWC and the provider of the final determination within 30 0days of the receipt date of May 26, 2017 according to the requirement of the HCN."

Response Submitted by: Liberty Mutual Insurance

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
January 12, 2017X	Outpatient Hospital Services	\$11,289.68	\$4,905.08

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.240 sets out requirements for paying or denying medical bills.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §134.403 sets out the hospital fee guideline for outpatient services.
4. Texas Labor Code §Labor Code 401.011 defines general words and terms related workers' compensation.
5. Texas Labor Code §413.031 entitles health care providers to a review of services if payment is denied.
6. Texas Insurance Code §1305.004 defines terms related to workers' compensation health care networks.

7. Texas Insurance Code §1305.006 establishes insurance carrier liability for certain out-of-network health care.
8. Texas Insurance Code §1305.153 sets out general provisions related to provider reimbursement.
9. Texas Insurance Code §1305.154 and §1305.155 provide the carrier retains ultimate responsibility to ensure performance of delegated functions according to applicable statutes and rules and that nothing may be construed to limit a carrier's responsibility (including financial) to comply with statutory and regulatory requirements.
10. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - XF89 – PROVIDER IS NOT WITHIN THE COVENTRY HEALTH CARE NETWORK (HCN) FOR THIS CUSTOMER. TX INSURANCE CODE 1305.004
 - Z652 – RECOMMENDATION OF PAYMENT HAS BEEN BASED ON A PROCEDURE CODE WHICH BEST DESCRIBES SERVICES RENDERED.
 - 193 – RECOMMENDATION OF PAYMENT HAS BEEN BASED ON A PROCEDURE CODE WHICH BEST DESCRIBES SERVICES RENDERED.
 - W3 – RECOMMENDATION OF PAYMENT HAS BEEN BASED ON A PRO

Issues

1. Is the injured employee enrolled in a certified workers' compensation health care network?
2. Are the services eligible for medical fee dispute resolution?
3. What is the applicable rule for determining reimbursement for the disputed services?
4. What is the maximum allowable reimbursement for the services in dispute?
5. Is the requestor entitled to additional payment?

Findings

1. The respondent states that "This claim is covered under Liberty HCN and is being addressed as an HCN complaint. The bill for services of January 12, 2017 is currently being reviewed by the Clinical Review team. We will advise both DWC and the provider of the final determination within 30 days of the receipt date of May 26, 2017 according to the requirement of the HCN."

Despite the respondent's assertion that the division would be advised of the results of their review within thirty days, no further response has been received from the insurance carrier as of the date of this review.

Other than stating so in the response, the respondent has not provided any documentation to support the injured employee is enrolled in a workers' compensation health care network certified in accordance with Chapter 1305.

Review of division records finds no information to support the patient is enrolled in a workers' compensation health care network certified in accordance with Chapter 1305. The insurance carrier has never reported to the division any information regarding enrollment of the injured employee in a certified workers' compensation HCN.

Although the response states that the employee is enrolled in Liberty HCN, the submitted explanations of benefits do not reference the name Liberty HCN or Liberty Health Care Network anywhere on the EOBs.

28 Texas Administrative Code §133.240(f)(15) requires that the insurance carrier shall include the "workers' compensation health care network name (if applicable)" on the paper form of an explanation of benefits.

While the explanation of benefits does mention the name "Coventry Health Care Network (HCN)" — Coventry Health Care Network (HCN) is not registered with the division as a certified Texas workers' compensation health care network established in accordance with Insurance Code Chapter 1305. Coventry Health Care Network is rather a trademark under which a variety of different networks (each with separate names) are marketed. "Coventry Health Care Network" is not the name of a specific Texas certified workers' compensation health care network in which a Texas injured worker would be enrolled.

There are two certified worker's compensation networks listed in division records that include the word "Coventry" in their name; however, the above information does not match division records and is not sufficient for a health care provider or injured employee to identify which entity is being asserted as the network, or even that the entity is a *Texas workers' compensation network* certified in accordance with Insurance Code Chapter 1305.

The respondent did not submit any information regarding the business relationships between Coventry HCN and Liberty HCN; however, the information listed on the EOB was not sufficient to identify Liberty HCN as a

certified network in which the patient was enrolled. Without listing the name of the specific Texas workers' compensation health care network in which the injured employee is enrolled (if applicable), the insurance carrier has failed to meet the requirements of Rule §133.240(f)(15).

Moreover, in the absence of any evidence to support that the insurance carrier presented clear information to the health care provider that the injured employee was enrolled in a certified workers' compensation health care network (HCN) prior to the filing of a medical fee dispute—whether as a plain language notice on an explanation of benefits issued before the filing of a medical fee dispute, or otherwise—the respondent has failed to meet the requirements for raising such a defense.

28 Texas Administrative Code §133.307(d)(2)(F) requires that "The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review."

While the denial reason on the EOB states "HEALTH CARE NETWORK (HCN)" and references obliquely "TX Insurance Code 1305.004(B) and Labor Code 401.011 — this falls far short of a plain language notice informing the provider that the patient is enrolled in a certified workers' compensation health care network or of any rights and responsibilities of the provider that appertain thereto.

Note that the referenced Insurance Code 1305.004(B) [and here the division assumes the carrier is referring to lower case (b) and not upper case (B), *which does not exist*] states only that "In this chapter, the following terms have the meanings assigned by Section 401.011, Labor Code: (1) 'compensable injury'; (2) 'doctor'; (3) 'employer'; (4) 'health care'; (5) 'health care facility'; (6) 'health care practitioner'; (7) 'health care provider'; (8) 'injury'; (9) 'insurance carrier'; (10) 'orthotic device'; (11) 'prosthetic device'; and (12) 'treating doctor.'" Whereas, Texas Labor Code Section 401.011 contains the corresponding definitions for the referenced terms. In total, Section 401.011 defines 44 terms; however, citing this section of the Labor Code by number is inadequate in itself to constitute any kind of plain language notice.

Upon review of the above information, the division concludes that the insurance carrier has waived the right to raise new denial reasons or defenses not presented to the health care provider prior to the filing of the MFDR request. As found above, the insurance carrier failed to identify on the explanation of benefits the name of the certified workers' compensation network in accordance with the requirements of Rule §133.240(f)(15), and per Rule §133.307(d)(2)(F) any new defenses or denial reasons may not be considered in this review.

Based on the information presented by the respondent for review, the division concludes the respondent has failed to support that the injured employee is enrolled in a certified HCN. Moreover, even were the injured employee enrolled in a network, the insurance carrier did not include the name of the alleged network on the EOB in accordance with the medical bill processing requirements of Rule §133.240(f)(15). The insurance carrier thus failed to give plain language notice to the provider that a network was involved or that any special requirements were applicable and has therefore waived the right to assert that network provisions apply.

2. The requestor is a hospital that provided surgical services to an injured employee that the health care provider asserts is enrolled in a workers' compensation health care network subject to the provisions of Texas Insurance Code chapter 1305. The requestor is not a participating provider in the health care network. The provider has requested medical fee dispute resolution pursuant to Rule §133.307 and Labor Code §413.031.

As stated above, the carrier has failed to support that the injured employee is enrolled in a certified worker's compensation health care network. Accordingly, the insurance carrier is the responsible party and the division has authority to review the matter as a medical fee dispute under Rule §133.307 and Labor Code §413.031.

Alternatively, as stated above, the insurance carrier has waived the right to raise network provisions as a defense, and therefore the insurance carrier is the responsible party and the division has authority to review the matter as a medical fee dispute under Rule §133.307 and Labor Code §413.031.

Lastly, the division's MFDR section has authority to review fee disputes in accordance with Insurance Code §1305.153(c), which states that "Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation."

Insurance Code §1305.006 requires that “An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee: (1) emergency care.”

Insurance Code §1305.004(a)(13) defines a medical emergency as “the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in: (A) placing the patient’s health or bodily functions in serious jeopardy; or (B) serious dysfunction of any body organ or part.”

Review of the submitted information finds that a medical emergency is supported. Consequently, the disputed services were provided as described in §1305.006, and per §1305.153(c) shall be reimbursed as provided by the Texas Workers’ Compensation Act and applicable rules of the commissioner of workers’ compensation. Accordingly, the requestor is entitled to review of the disputed services pursuant to Texas Labor Code §413.031 and applicable Division rules.

Texas Insurance Code Sections 1305.154(c)(5) and 1305.155(h) make clear that the carrier retains ultimate responsibility for ensuring that all delegated functions and all management contractor functions are performed in accordance with applicable statutes and rules and that nothing in the contract or in Insurance Code Section 1305.155 may be construed to limit in any way the carrier’s responsibility, including financial responsibility, to comply with all statutory and regulatory requirements.

Labor Code §413.031(a)(1) states that a health care provider is entitled to a review of a medical service provided if a health care provider is “denied payment or paid a reduced amount for the medical service rendered.”

Labor Code §413.031(c) further states that “in resolving disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment given the relevant statutory provisions and commissioner rules.”

The Texas Workers’ Compensation Act entitles health care providers to a review of medical services if they are denied payment. The Act further grants the division authority to resolve such disputes and adjudicate any payment. For these reasons, the division has jurisdiction to review the disputed medical fee issues.

3. This dispute regards outpatient hospital facility services performed in an emergency (as found above), with payment subject to 28 Texas Administrative Code §134.403 requiring that the maximum allowable reimbursement (MAR) shall be the Medicare facility specific amount (including outlier payments) applying the effective Medicare Outpatient Prospective Payment System (OPPS) formulas and factors, published annually in the Federal Register, with modifications as set forth in the rule. Medicare OPPS formulas and factors are available from www.cms.gov.

Rule §134.403(f)(1) requires the sum of the Medicare facility specific amount and any applicable outlier payment be multiplied by 200 percent, unless a facility or surgical implant provider requests separate payment of implantables. Review of the submitted documentation finds that separate reimbursement was not requested.

4. Medicare’s Outpatient Prospective Payment System (OPPS) assigns an Ambulatory Payment Classification (APC) for billed services based on procedure codes and supporting documentation. The APC determines the payment rate. Hospitals may be paid for more than one APC per encounter. Payment for ancillary items and for services without procedure codes is packaged into the APC payment. The Centers for Medicare and Medicaid Services (CMS) publishes quarterly lists of APC rates in the OPPS final rules, available from www.cms.gov.

Reimbursement for the disputed services is calculated as follows:

- Procedure code 15736 has status indicator T, denoting significant outpatient procedure. It is assigned APC 5055. The OPPS Addendum A rate of \$2,504.69 is multiplied by 60% for an unadjusted labor portion of \$1,502.81, which is multiplied by the facility wage index of 0.9653 for an adjusted labor amount of \$1,450.66. The non-labor portion is 40% of the APC rate, or \$1,001.88. The sum of the labor and non-labor portions is \$2,452.54. The cost of services does not exceed the fixed-dollar threshold of \$3,825. The outlier payment is \$0. The Medicare facility specific amount of \$2,452.54, is multiplied by 200% for a MAR of \$4,905.08. Anesthesia and recovery room services billed on separate lines are included in the surgery package and are not separately paid.
5. The total recommended reimbursement for the disputed services is \$4,905.08. The insurance carrier has paid \$0.00, leaving an amount due to the requestor of \$4,905.08. This amount is recommended.

Conclusion

The Division would like to emphasize that the findings and decision in this dispute are based on the evidence presented by the requestor and respondent available at the time of review. Even though all the evidence was not discussed, it was considered.

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$4,905.08.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$4,905.08, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

_____	<u>Grayson Richardson</u>	<u>July 28, 2017</u>
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012**.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.